completion and return to the Inland Revenue Department. He had instructed the appointed auditor to apply for an extension of time to file the tax returns.

(3) He had always been willing and able to attend Committee Meeting if fixed on a Sunday afternoon.

The third defendant denied she abused Dennis Kwok. She deposed that Dennis Kwok came to her house to demand for the Club's account books. He was told that they were not with her. However, he was not a Committee Member and was not entitled to take the books with him.

An unincorporated member club, not being a partnership or legal entity, cannot sue or be sued in the club name (see *London Association for Protection of Trade* v. *Greenlands, Ltd.*)[1] The Karting Club of Singapore is unincorporated and consequently cannot be made a plaintiff to this action.

This should dispose of the matter. Since arguments were addressed to me as to the validity of the expulsion of the defendants from the General Committee I will deal with it and express my views.

Before a member of the General Committee can automatically be retired from the General Committee he must first of all have failed to attend three consecutive Committee meetings and secondly that he has failed to give adequate reasons to the Secretary.

Now what had happened in this case? The Chairman requested the Secretary to convene a meeting of the General Committee on several occasions which the Secretary failed to do. The Chairman himself could have convened a meeting when the Secretary failed to convene a meeting, but he did not do so between October 1983 and January 1984 until February 5, 1984. There is no evidence that notice of the calling of that meeting was served on any of the defendants. Consequently only the Chairman and Dennis Kwok were present. At this meeting "it was deemed that the defendants were automatically retired from the General Committee" and the Chairman proceeded to co-opt three members into the General Committee.

It is clear that the defendants had not breached Rule 8 and that their expulsion from the General Committee was invalid. Consequently the purported appointment of three members into the General Committee on February 5, was inoperative.

For these reasons this Originating Summons must be dismissed with costs. As this action was initiated by the Chairman in the name of the Club he must personally pay the costs of the defendants.

Application dismissed.

Solicitors: *P. Suppiah; Wong Juan Swee.*

KWA HOCK KEE & ANOR. v. KWA KIAN SENG

[A.C.J. (Thean J.) August 30, 1984]
[Singapore – Suit No. 4287 of 1982]

Probate and Administration – Claim by administrators for damages for negligence – Order for grant of letters of administration – Schedule to grant omitting claim for earnings for lost years – Such claim included subsequent to issue of writ – Whether claim maintainable by administrators – Estate Duty Act (Cap. 137), s.38 – Civil Law Act (Cap. 30), ss. 8 & 12 – Probate and Administration Act (Cap. 23), ss. 2, 35(1) & 37.

Tort – Damages for loss of earnings for lost years – Whether excessive.

The deceased died in a road accident while travelling in a motor car driven by his brother, the defendant. The deceased's parents, the plaintiffs, claimed against the defendant as the administrators of the estate of the deceased for damages for negligence for the benefit of the estate under section 8 of the Civil Law Act and for the benefit of themselves as dependants of the deceased under section 12 of the Act.

On October 22, 1981 the District Court made an order for the grant to the plaintiffs of letters of administration of the estate of the deceased. On February 2, 1982 the grant was extracted. The Schedule of assets attached to the grant contains 4 items of assets of the deceased passing on his death, including a claim for loss of expectation of life, but does not contain a claim for damages for loss of earnings for the "lost years", which is the main issue in this case. The plaintiff took out the writ on October 7, 1982, claiming *inter alia* loss of earnings for the lost years. Subsequent to this, the plaintiffs filed a corrective affidavit with the Commissioner of Estate Duties in respect of the claim for the loss of earnings for the lost years, and a supplementary schedule of assets containing such a claim was issued by the Commissioner.

Judgment in default of defence was entered against the defendant. The Senior Assistant Registrar awarded *inter alia* a sum of $75,000 for loss of earnings for the lost years based on a multiplier of 18 and a multiplicand of $350 per month.

The defendant appealed against this part of the award on two grounds: (1) the grant of letters of administration at the time the writ was issued did not give the plaintiffs the authority to sue for loss of earnings for the lost years because at that time there was no schedule of assets attached to the grant containing such a claim. The supplementary schedule issued by the Commissioner subsequently did not cure the initial absence or lack of title in suing for such a claim; (2) the damages awarded were excessive.

Held: dismissing the appeal: (1) it is the grant of letters of administration, not the schedule of assets, that confers a title on the plaintiffs in their representative capacity. Under section 37 of the Probate and Administration Act, where a person dies intestate his movable and immovable property vests in the Chief Justice and on the making of an order for a grant of administration by the court all such property vests in the administrator. The grant does not limit the authority or powers of the administrator to any specific property; nor does it exclude any specific property therefrom. Nowhere in section 38 or elsewhere in the Probate and Administration Act is it provided that a grant of representation shall be issued only in respect of those assets appearing in the said schedule or that a grant is only effective in authorising the representative to deal with only those assets and no other;

(2) the purpose of section 38 is to ensure that all estate duties payable on property passing or deemed to pass on death are paid or secured prior to the issue of a grant of representation;

(3) on the question of quantum of damages, the amount awarded is not grossly or manifestly excessive.

Cases referred to:

(1) *Hunt* v. *Stevens* 3 Taunt 113; 128 E.R. 46.
(2) *Carr* v. *Roberts* 2 B. & Ad. 905; 109 E.R. 1379.
(3) *Ingall* v. *Moran* [1944] 1 K.B. 160.
(4) *Low Kok Tong* v. *Teo Chan Pan* [1982] 2 M.L.J. 299.
(5) *Lai Wee Lian* v. *Singapore Bus Service (1978) Ltd.* [1984] 1 M.L.J. 325.
(6) *Sahara binti Abdul Samad & Ors.* v. *Chan Kwai Chuen* [1982] 2 M.L.J. xlvii.

CIVIL SUIT.

Gay Thuan Ewe for the plaintiffs.
Goh Joon Seng for the defendant.

Cur. Adv. Vult.

Thean J.: On July 12, 1981, one Kwa Kian Hua, was travelling as a passenger in a motor car driven by his brother Kwa Kian Seng, the Defendant in this action, along Woodland Road towards Johore Bahru. The car collided into a tree and landed in a drain, as a result of which Kwa Kian Hua died. The Plaintiffs, who are the parents, brought this action as the administrators of the estate of Kwa Kian Hua deceased ("the deceased") for the benefit of the estate under section 8 of the Civil Law Act (Cap. 30) and for the benefit of themselves as dependants of the deceased under section 12 of the said Act, and their claim against the Defendant is for damages for negligence.

An order was made on October 22, 1981 by the District Court for the grant to the Plaintiffs of the letters of administration of the estate of the deceased and the grant was extracted on February 2, 1982. Attached to the grant is a schedule of assets issued by the Commissioner of Estate Duties under section 38(2) of the Estate Duty Act. That schedule contains 4 items of assets of the deceased passing on his death including a claim for loss of expectation of life but does not contain a claim for damages for loss of earnings for the period in which but for the accident the deceased would have lived, *i.e.* what is generally called the "lost years." On October 7, 1982 the writ in this action was taken out by the Plaintiffs. They claimed: (i) general damages for the estate under section 8 of the Civil Law Act for loss of expectation of life and loss of earnings for the lost years, and (ii) the general damages under section 12 of the said Act for loss of dependency. Subsequent to the commencement of the action the Plaintiffs filed a corrective affidavit with the Commissioner of Estate Duties in respect of the claim for loss of earnings for the lost years and a supplementary schedule of assets containing such a claim was issued by the Commissioner under section 38(3) of the Estate Duty Act.

No defence was delivered by the Defendant and judgment was entered against him with damages to be assessed. In assessing damages the learned Senior Assistant Registrar awarded, *inter alia*, a sum of $75,600 for loss of earnings for the lost years based on a multiplier of 18 and a multiplicand of $350/– per month. Against this part of the award the Defendant appealed.

Mr. Goh on behalf of the Defendant based his appeal on two grounds. First, the grant of letters of administration to the estate of the deceased at the time when the writ was issued did not clothe the Plaintiffs with the authority to sue for a claim for loss of earnings for the lost years. At that time there was no schedule of assets attached to the grant of letters of administration containing such a claim and by reason thereof the Plaintiffs as the administrators did not have any title to maintain such a claim. Though after the commencement of the action a supplementary schedule was issued by the Commissioner of Estate Duties containing such a claim the initial absence or lack of title in suing for the claim cannot be cured. He cited *Hunt* v.

Stevens[1] and *Carr* v. *Roberts*[2] as authorities for the proposition that if the value of the estate exceeds that at which the grant is stamped the grant is void in respect of the excess. In principle there is no difference between stamp duty and estate duty; both are revenue statutes. In his submission the title of the Plaintiffs as the administrators is derived from the grant of representation: *Ingall* v. *Moran*[3], and the grant is only valid for the assets of the deceased as listed in the schedule attached thereto. He also relied on section 38 of the Estate Duty Act (Cap. 137), which by subsection (1) thereof provides that no grant of representation shall be issued by any court until the Commissioner has certified in a certificate to be filed in court that the estate duty affidavit has been delivered and the estate duty payable in respect of the estate has been paid or that he has allowed payment thereof to be postponed and stating the value as assessed by the Commissioner of the property on which estate duty is payable. Further, under subsection (2) of section 38 a schedule of the property of a deceased person in respect of which duty has been paid in such form as may be prescribed or a certificate that payment of estate duty has been postponed or will be made by instalments authenticated by the signature of the Commissioner shall be annexed to the grant of representation. Such schedule shall contain a description of all the property passing on the death of a deceased person.

Mr. Goh's second ground of appeal is one relating only to the quantum of damages as assessed and is only relevant if his arguments on the first ground fail. He submitted that the amount awarded as damages for the loss of earnings for the lost years based on a multiplier of 18 was excessive.

The first grounnd of appeal should be considered firstly from the point of view of grant of representation of the estate of a deceased person and, secondly, from the point of view of estate duty payable on property passing or deemed to pass on the death of such person. I do not find the two cases, *Hunt* v. *Stevens (supra)* and *Carr* v. *Roberts (supra)* of any assistance. They do not really support the proposition that the grant of representation confers title on the Plaintiffs as the administrators with respect only to the assets as listed in the schedule annexed thereto. It seems to me that the answer to the first ground of appeal of Mr. Goh is found in the express provisions of the Probate and Administration Act (Cap. 23). Under section 37 of the said Act where a person dies intestate his movable and immovable property vests in the Chief Justice and on the making of an order for a grant of administration by the court all such property vests in the administrator. Under section 2 of the said Act letters of administration means the grant under the seal of the court issuing the same, authorising the person or persons therein named to administer an intestate's estate in accordance with law. In this case the grant under the seal of the District Court was issued to the Plaintiffs prior to the commencement of the action and by the terms of the grant "Letters of Administration of all and singular the movable and immovable property situate within the jurisdiction of the Courts in the estate of Kwa Kian Hua late of ..... were granted to" the Plaintiffs. The grant does not limit the authority or powers of the administrators to any specific property; nor does it exclude any specific property therefrom. Clearly on the basis of the grant the Plaintiffs are authorised to administer the estate of the deceased and in so doing to deal with all the property of the estate, including all causes of action, which vested in the Plaintiffs as the administrators upon the order made for the grant.

Mr. Goh drew my attention to section 35(1) of the Probate and Administration Act, under which no probate or letters of administration granted by the District Court shall be invalid by reason of the assets and effects of the deceased person being subsequently found to be in greater value than $50,000/—. It is his contention that that sub-section applies only where the value of the assets and effects of the deceased person has been found to be greater than $50,000/— and not where a property not originally included in the schedule of assets attached to the grant is subsequently added which thereby increases the value of the assets and effects to a sum exceeding $50,000/—. This in my view is an unnecessary restrictive application of subsection (1) of section 35. It seems to me that subsection (1) is equally applicable where the assets and effects of a deceased person are subsequently found to be of greater value than $50,000 by reason of any asset (not having been initially included as a part of the assets and effects) subsequently being discovered or becoming a part of the assets and effects of the deceased person.

I now turn to the provisions of the Estate Duty Act (Cap. 137) and consider the extent to which such provisions impinge on the position discussed above. On this point the only relevant provision is section 38 of the Act which has been

relied upon by Mr. Goh in support of his contention. Section 38 by subsection (1) thereof only prohibits the issue of a grant of representation unless a schedule in accordance with the said subsection (1) has been issued. However, subsection (3) of that section provides that if after the issue of a grant of representation in respect of a deceased person it is discovered that any property passing or deemed to pass on his death has not been included in the said schedule, then upon payment of all estate duty, if any, in respect of such property the Commissioner shall cause particulars of the same to be entered in the said schedule or shall issue a supplementary schedule. The issue of a supplementary schedule is precisely what had been done in this case. Nowhere in the said section or elsewhere in the Act is it provided that a grant of representation shall be issued only in respect of those assets appearing in the said schedule or that a grant of representation is only effective in authorising the representative to deal with only those assets and no other.

The purpose of section 38 is to ensure that all estate duties payable on property passing or deemed to pass on death of a deceased person are paid or secured prior to the issue of a grant of representation, and hence a schedule of such property is required to be attached to the grant. Where any property is not stated in the schedule it does not mean that such property is free or exempted from any estate duty. There is machinery provided elsewhere in the Act for levying and collecting the estate duty payable on such property.

I agree with the submission of Mr. Joseph Gay on behalf of the Plaintiffs that it is the grant, and not the schedule of assets required under section 38 of the Estate Duty Act, which confers a title on the Plaintiffs in their representative capacity. If such a schedule of assets does not contain as an item of assets the claim for loss of earnings for the lost years, the Defendant would be entitled to insist on a supplementary schedule to be attached so as to ensure that estate duty payable on such claim has been paid or postponed. There is therefore no defect in the representative title of the Plaintiffs in respect of the claim for loss of earnings of the deceased for the lost years.

On the second ground of the appeal, I am not disposed to interfere with the award made by the learned Senior Assistant Registrar. In the case of *Low Kok Tong* v. *Teo Chan Pan*[4], where the deceased was 20 years of age the Court of Appeal applied a multiplier of 15. So did the Privy Council in the case of *Lai Wee Lian* v. *Singapore Bus Service (1978) Ltd.*[5] where the plaintiff was 23 years old at the date of the accident and 26½ years old at the date of trial. In the case of *Sahara binte Abdul Samad & Ors.* v. *Chan Kwai Chuen*[6] where the deceased at the time of his death was 29 years old, Kulasekaram, J. in making an award of damages adopted a multiplier of 17. Having regard to these cases, I consider that the amount awarded by the learned Senior Assistant Registrar is not grossly or manifestly excessive.

For these reasons I dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Leong & Gay; Chan, Soh & Co.*